

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

IN RE: ETHICON, INC. PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION	Master File No. 2:12-MD-02327 MDL No. 2327
THIS DOCUMENT RELATES TO ETHICON WAVE 3 CASES	JOSEPH R. GOODWIN U.S. DISTRICT JUDGE

**DEFENDANTS' REPLY TO OPPOSITION TO MOTION TO STRIKE
AUGUST 29, 2016 DEPOSITION OF JERRY BLAIVAS, M.D.**

Defendants Ethicon, Inc., Ethicon LLC, and Johnson & Johnson (collectively "Ethicon") submit this reply brief in further support of their motion to strike the August 29, 2016 Deposition of Jerry Blaivas, M.D.

Plaintiffs would like for the Court to believe that Dr. Blaivas's August 29, 2016 deposition was specific to the TVT-Exact device. For instance, Plaintiffs dubiously claim that "[a]t that time [August 29], counsel elicited Dr. Blaivas's deposition testimony pertinent to the TVT-Exact device, manufactured and marketed by Ethicon, for the treatment of stress urinary incontinence ('SUI')." (Doc. 3066, p. 3) (emphasis added). Ethicon has filed the complete deposition transcript herewith as Exhibit A. It is clear from the deposition that Plaintiffs' counsel had no interest in eliciting any opinions from Dr. Blaivas specific to the TVT-Exact device. Instead, Plaintiffs' counsel was solely interested in rehabilitating Dr. Blaivas regarding his general TVT opinions and eliciting opinions that are new and/or contradict his prior testimony.

Plaintiffs' suggestion that Ethicon is not prejudiced by and should not have been surprised by their decision to provide same-day notice of a deposition to discuss opinions by Dr. Blaivas that were not specific to the TVT-Exact device is absurd. Plaintiffs have offered no explanation for their failure to comply with PTO No. 38, and the Court should not reward Plaintiffs' gamesmanship by allowing them to make use of an improperly noticed deposition that was clearly designed to rehabilitate Dr. Blaivas from his prior testimony.¹

Finally, there is no basis for Plaintiffs' argument that Ethicon acted with unclean hands. A party who notices a deposition does not compel itself to take the deposition. Instead, it may cancel the deposition at any time and for any reason. Plaintiffs have cited no authority to the contrary, nor have they cited any authority to support the notion that a party is justified in noticing a same-day deposition of a witness whose deposition has been cancelled.

For the foregoing reasons and those set forth in Ethicon's initial brief, the Court should strike Dr. Blaivas's August 29, 2016 deposition and all of Plaintiffs' arguments relying on that deposition.

Respectfully Submitted,

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¹ Plaintiffs' argument that Ethicon did not comply with PTO No. 38 by allegedly failing to timely object to the deposition lacks merit. PTO NO. 38 §J.1(c) required Ethicon to object "within thirty days after the filing of the deposition," and Ethicon plainly did so through its motion to strike.

/s/ David B. Thomas

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CERTIFICATE OF SERVICE

I, Christy D. Jones, certify that on this day I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

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